))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9698 of 1999
and
SPECIAL CIVIL APPLICATION No 31 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAYED DADAMIYA HMUMIYA UPSARPANCY AND HOLDING CHARGE
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 9698 of 1999
MR JAYANT P BHATT for Petitioner No. 1
MR PR ABICHANDANI, AGP for Respondent No. 1, 2
MR RC JANI for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/08/2001

COMMON ORAL JUDGEMENT

Rule in each petition. The learned counsel for the respondents in the respective petitions waive service of Rule.

2. Saberaben Hussainmiya Saiyed was elected as the Sarpanch of village Alampur in Kadi Taluka of Mehsana District in October, 1996. At the instance of the Up-sarpanch of the said village - Saiyed Dadamiya Hmumiya, proceedings were initiated against Saberaben for removing her from the office of Sarpanch under Section 57 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as `the Act'). The District Development Officer, Mehsana passed order 12.11.1999 removing Saberaben from the office of Sarpanch on the ground that she was found guilty of illegally felling trees and had committed violation of the provisions of the Saurashtra Felling of Trees Act and that she was also subjected to penalty. Saberaben challenged the said order before the Additional Development Commissioner in appeal No. 156 of 1999. Up-sarpanch-Saiyed Dadamiya had filed a caveat application before the Additional Development Commissioner and, therefore, the Additional Development Commissioner took up the appeal for hearing on the same day and by his order dated 26.11.1999 set aside the order of the District Development Officer removing Saberaben from the office of Sarpanch and remanded the matter to the District Development Officer for fresh decision after considering the outcome of Saberaben's revision application No. 11 of 1999 filed before the State Government against the order of the Prant Officer and the Mamlatdar holding Saberaben to be guilty of contravening the provisions of Saurashtra Felling of Trees Act and the penalty imposed therefor.

Aggrieved by the said order dated 26.11.1999, Up-sarpanch Saiyed Dadamiya has filed Special Civil Application No. 9698 of 1999.

3. While issuing notice on the said petition, this Court passed ad-interim order dated 7.12.1999 staying the operation and implementation of the order dated 26.11.1999 passed by the Additional Development Commissioner. In view of the said ad-interim relief, Up-sarpanch Saiyed Dadamiya has continued to hold additional charge of the office of Sarpanch. Consequent to the aforesaid ad-interim order, the District Development Officer passed order dated 30.12.1999 permitting Saiyed Dadamiya to continue to hold additional charge of the office of Sarpanch. Aggrieved by the said order of the District Development Officer, Saberaben has filed Special Civil Application No. 31 of 2000.

4. When both the petitions have reached hearing today, Mr Jayant Bhatt, learned counsel appearing for Saiyed Dadamiya, Up-sarpanch has stated that the revision

application filed by Saberaben against the order of the Prant Officer under the Saurashtra Felling of Trees Act was dismissed by the State Government last year. Mr Bhatt, therefore, submits that the very foundation of the order of remand is knocked out and there is no defence available to Saberaben regarding the charge for which he was removed from the office of Sarpanch.

5. Mr RC Jani, learned counsel for Saberaben is not in a position to dispute the statement coming from Mr Jayant Bhatt for Saiyed Dadamiya.

6. In view of the above, it is obvious that the order of removal passed by the District Development Office requires no interference and, therefore, the impugned order of the Additional Development Commissioner passed on 26.11.1999 will have to be set aside and the order dated 12.11.1999 passed by the District Development Officer, Mehsana will have to be restored.

7. In view of the above discussion, Special Civil Application No. 9698 of 1999 is allowed. The order dated 26.11.1999 (Annexure "A") passed by the Additional Development Commissioner in appeal No. 156 of 1999 is set aside. The said appeal is dismissed and the order dated 12.11.1999 (Annexure "H") passed by the District Development Officer, Mehsana removing Saberaben Hussainmiya Saiyed from the office of Sarpanch under Section 57 of the Act has become operative and all the parties shall carry out and implement the said order.

8. As far as Special Civil Application No. 31 of 2000 is concerned, since the order of the Additional Development Commissioner is set aside, the order dated 30.12.1999 of the District Development Officer permitting Saiyed Dadamiya Hmumiya to continue to hold the additional charge of the office of Sarpanch of Alampur Gram Panchayat shall hold the field subject to the modification that Saiyed Dadamiya shall continue to hold the office of Sarpanch till the term of the panchayat continues i.e. till October, 2001. Thereafter the authorities shall hold elections to the office of Sarpanch and elections of the members of the Gram Panchayat in accordance with law.

9. Both the petitions are accordingly disposed of. Rule is discharged in Special Civil Application No. 31 of 2000. Rule is made absolute in Special Civil Application No. 9698 of 1999.

(M.S. Shah, J.)

sundar/-